HON'BLE SRI JUSTICE NOOTY RAMA MOHAN RAO

W.P. NO. 6169 of 1998

DATED: -06-2007

Between:-

M.A. Khalid s/o Ahmed Ghouse, aged about 45 years, occ: Controller, E.No. 54485, R/o Jandagalli, Banswada,Nizamabad District.

...PETITIONER

And

The Managing Director, APSRTC Musheerabad, Hyderabad and two others.

...RESPONDENTS

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O R D E R

This writ petition is directed against that portion of the award passed by the Labour-II, Hyderabad in I.D. No. 407 of 1992 (old I.D. No. 359 of 1990), whereby the Labour Court had ordered for the imposition of penalty of reducing the basic pay of the writ-petitioner to the minimum while denying him back wages.

The case of the writ-petitioner is that he joined the service in Andhra Pradesh State Road Transport Corporation (APSRTC) as a Conductor on 04-04-1975 and that while he was conducting a bus on 16-01-1990 on the route between Nizamabad and Kamareddy, a check was conducted by the checking officials of the APSRTC at Stage No.8. Though no passengers were found to be traveling without any tickets but the Checking Inspector has found that the writ-petitioner has issued tickets, which are stamped as Rs.2.25 ps. denomination as against Rs. 6.50 ps. which is printed thereon. When the cash has been verified with the writ-petitioner the checking officials found it to be short by Re.1/-. Based upon the inspection carried out, four different charges has been laid against the writ-petitioner. An enquiry officer

has been appointed to conduct enquiry and based upon the report submitted by the enquiry officer, an order has been passed on 17-08-1990 by the second respondent, the Depot Manager at Kamareddy removing the writ-petitioner from service. Calling in questioning the orders of removal, the writ petitioner has originally instituted I.D. No. 359 of 1990, which came to be re-numbered as I.D.No. 407 of 1992 and the case was made over to the Labour Court-II at Hyderabad.

It is the contention of the writ-petitioner all through that certain tickets which are over-stamped have been in fact supplied by the Depot at Kamareddy and therefore he had issued those very same over stamped tickets to the passengers for the fare of Rs.2.25 ps. The writ-petitioner contends that if the stamping on the printed tickets has been carried out by the APSRTC officials themselves before they are being issued to the conductors, it does not amount to “unauthorized over stamping” by the writ petitioner and consequently it cannot be termed as an irregularity or misconduct on his part. Substantially what the writ petitioner points out is if a low denomination ticket has been over-stamped to represent a higher denomination, one can suspect a possible attempt on the part of the conductor to appropriate the differential amount for himself. When a higher denomination ticket has been over-stamped with a lesser denomination, the conductor would be found accountable and responsible for the short remittance of cash and, therefore, the over-stamping on the tickets where the print was

Rs.6.50 ps. with Rs.2.25 ps. denomination could not have been attempted at by the writ-petitioner. The writ-petitioner has pointed out that the Controller of Indalvai Depot had categorically stated that the over-stamped tickets might have been supplied by Kamareddy Depot in the exigency of service, possibly when the tickets of the denomination of Rs.2.25 ps. are found to be short in supply. Further it is also sought to be established that whenever particular denomination tickets are either not available or in short supply the Issuing Officials themselves would be over-stamping on the available denomination tickets and therefore the conduct of writ petitioner in using them does not amount to unauthorized over-stamping for which he is not liable to be penalized.

It is a fact that the writ-petitioner had admitted to the shortage of cash by Re.1/-. But, however, what the writ-petitioner pleaded is that the shortage of Re.1/- may have taken place due to variety of reasons including over-sight on the part of the writ-petitioner either while collecting fares from the passengers or while tendering the balance change amount to such of the passengers who tendered amount higher than the actual fare. Therefore, the writ petitioner pleads that for shortage of cash of such insignificant amount of Re.1/-, he should not be penalized too harshly by imposing a penalty of removal from service.

The Labour Court had considered the matter and had arrived at

the conclusion that the penalty imposed against the writ-petitioner is excessive and, therefore, considered it appropriate to modify the same. Therefore, it had passed an order directing imposition of penalty of reducing the basic pay of the writ-petitioner to the minimum and denying back wages as sufficient to meet the ends of justice. However, the Labour Court in the operative portion of the award passed by it had ordered as under:-

> "In the result, award is passed directing the respondent to reinstate the petitioner with continuity of service and attendant benefits and without back wages while reducing his pay to the minimum basic. The award is passed accordingly."

It is this portion of the award, which ordered reduction of pay of the writ-petitioner to the minimum stage of the scale of pay while simultaneously ordering the benefit of continuity of service and other attendant benefits, which is sought to be called in question in this writ petition.

Learned counsel for the writ-petitioner has pointed out that in terms of Regulation 8 (vii) of the A.P.S.R.T.C. (Classification, Control and Appeal) Regulations, reduction of pay to a lower stage in the time-scale is undoubtedly one of the penalties specified to be imposed for the proven misconduct on the part of the employees. But at the same time after having rendered 15 years of service to deny the benefit of 15 stages of progress made in the time-scale attached to the post of conductor is also a highly disproportionate penalty.

It is not in dispute that the writ-petitioner had joined the service in the Corporation as a Conductor in April, 1975 whereas the order of removal from service had been passed in August, 1990. For every completed year of satisfactory service, an employee would be earning an annual grade increment automatically, thus, hiking the pay by one stage in the running time-scale of pay attached to the post. Therefore, for the gravamen of the charge of shortage of cash of Re.1/-, imposition of penalty of denying the benefit of 15 stages of progress achieved in the time-scale is too harsh and does not meet the standards of reasonableness which is liable to be considered even while imposing the punishment. This apart, the learned counsel for the writ-petitioner had drawn my attention to Circular No. PD-67/1981-82, dated 18-12-1981 issued by the Vice Chairman & Managing Director of APSRTC, providing necessary guidance for all disciplinary authorities, wherein it has been pointed out that wherever an employee is directed to be reinstated with continuity of service and attendant benefits but without back wages, the salary of the employee shall be re-fixed by giving notional increments and that he shall not be paid back wages for the period when he was not on duty. It is also further clarified that attendant benefits do not include providing Uniform or Chappal allowance for the period the employee was not in service and similarly the period of absence from service shall not be considered for computing earned leave which he would have otherwise earned while

rendering physical service to the Corporation. Similarly the employee is also not entitled for payment of ex-gratia, house rent allowance and city compensatory allowance. Therefore, the learned counsel would contend that the order passed by the Labour Court on one hand granting him attendant benefits and while trying to impose a punishment of reducing his pay to the basic minimum are mutually contradictory in terms. Therefore, he contends that the power available to the Labour Court under Section 11-A of the Industrial Disputes Act has not been properly exercised warranting the correction by this Court.

Learned Standing Counsel for the Corporation, on the other hand, would contend that the Labour Court had only arrived at a probable view about the over-stamping of tickets by the Ticket Issuing Officers of Kamareddy Depot and that is the reason why the Labour Court had not found the writ-petitioner as not guilty of the charges framed against him, but however, while exercising the discretion in the matter of substituting the punishment, the discretion is correctly exercised by the Labour Court. Learned Standing Counsel for the Corporation would suggest that this Court should read the operative portion of the award along with the final conclusion recorded in the preceding paragraph wherein the Labour Court had indicated in clear terms that the imposition of penalty of reducing the basic pay to the minimum and denying of back wages will meet the ends of justice, and

therefore, if anything, it is the operative portion which deserves to be modified suitably by deleting the attendant benefits granted therein.

I have given my anxious consideration to the rival contentions. The award passed by the Labour Court is contradictory in its terms to a certain extent which I elaborate a little later. But, however, the fact remains that the gravaman of the charges leveled against the writ petitioner is that he had used and issued the tickets, which are found over-stamped unauthorisedly and that there shortage of Re. 1/-. The charges are leveled by the employer-APSRTC. It is, therefore, for the APSRTC to establish that the Ticket Issuing Officials at Kamareddy in this particular case have not issued any such over-stamped tickets to the writ-petitioner, when he reported to duty for conducting the bus in question. Normally every conductor at the time of assuming charge and also at the time of commencement of the journey of a bus is required to enter the details relating to ticket numbers issued to him which are strictly entered in a chart which is known and called as 'statistical record'. The tickets, which are supplied by the issuing officials of the Corporation, are all printed having numbers in a serial order. Therefore, it is a very simple exercise for one to check it out as to whether the tickets issued by the writ-petitioner have been over stamped by the writ-petitioner on his own or not. If they are not over-stamped by the APSRTC issuing officials for denomination value of Rs.2.25 ps. and if the writ-petitioner were to have over-stamped them,

he would have been called upon to make good the loss sustained at the rate of Rs.4.25 ps. for every single ticket which he issued to the passengers at the time when he was to hand over the cash for the day's transaction. Therefore, by over-stamping the denomination value of Rs.2.25 ps. the writ-petitioner would be risking of having to make good an amount of Rs.4.25 ps. on each ticket. This simply sounds illogical and unbelievable. One might attempt to derive some illegal benefit by over-stamping but no one would attempt to sustain loss requiring him to make good the same to the Corporation. Thus, the very allegation leveled against the writ-petitioner is on the face of it is unbelievable. Out of the entire set of allegations leveled against the writ-petitioner, the only charge which can strictly perhaps be held as proved is the shortage of Re.1/- in the cash belonging to the APSRTC remitted by the writ-petitioner. This charge had already been admitted by the petitioner. Therefore, for this charge of remitting cash of the Corporation short by Re.1/- the writ petitioner can be penalized but not for the rest of the allegations, which on their face are not believable at all. At any rate, the Corporation could not establish with reference to any relevant or credible material other than the oral statement of the Ticket Checking Inspector himself. As was already stated supra, the Checking Inspector himself states that the possibility of over-stamped tickets being supplied by the ticket issuing officials at Kamareddy Depot at the beginning of the journey to the writ-petitioner cannot be

ruled out. In this view of the matter, it is unreasonable to hold that the writ-petitioner as guilty of as either unauthorisedly over-stamped the denominations on the tickets supplied by the Corporation or guilty of having unauthorisedly used such tickets. Therefore, the writ-petitioner can at best be penalized for the admitted charge of shortage of Re.1/- remittance.

It is a settled principle of law that an appropriate and suitable punishment alone is liable to be imposed, which should meet the quantum of offence/misconduct committed by the offender. Imposition of too harsh or too excessive a punishment is also subversive of discipline inasmuch as it can be counter productive. Too harsh discipline not only causes resentment but also leaves an adverse impact on the overall productivity. Therefore, only an appropriate punishment meeting the quantum of guilt or misconduct proved should be imposed. Since the short remittance of Re.1/- which could have occasioned either due to over-sight while conducting the bus or even due to negligence, is too small and insignificant an area of misconduct. The proportion of shortage in the cash belonging to the respondent corporation cannot be considered as indicative of any abuse or misappropriation either attempted or real on the part of the writ petitioner conductor. Therefore, I find that the present case warranted exercise of jurisdiction under Section 11-A of the Industrial Disputes Act and to that extent the Labour Court had arrived at a

correct conclusion.

That leaves us as to what should be the punishment that should be visiting the writ-petitioner for the proven misconduct. As already noticed supra, the expressions 'continuity of service and attendant benefits' have a definite connotation of their own. By virtue of continuity of service granted by a Court, a fiction is created in the contract of employment which stood terminated. The employer is directed to reckon and treat the contract of employment to be surviving and subsisting even during such period when it has been terminated. There are certain benefits like payment of gratuity, payment of bonus which will depend upon the continuity of service. Therefore, the expression 'continuity of service' ordered by a Court would amount to reviving the contract of employment between the employer and the employee fictionally and to continue with the same after the reinstatement of the employee thereafter. The gap in between is bridged. Similarly the expression 'attendant benefits' also implies that some of the benefits which the employee otherwise would have automatically earned are liable to be granted to him. As was noted supra, in the Circular dated 18.12.1981 issued by the Vice Chairman and Managing Director of the APSRTC Corporation itself, it was clarified that the expression 'attendant benefits' enables the salary of the employee to be re-fixed by giving notional increments apart from various other benefits listed therein. The concept of notional increment

is that a fictional one is awarded at the rate of one increment for every 12 months of service, which the employee would have put in, but for the abrupt termination of the contract of employment brought about. Therefore, awarding of attendant benefits implies that the employee would be entitled to a notional increment by equal number of stages to that of the number of years of absence of duty brought about in between the termination and the eventual reinstatement. The Labour Court obviously had intended to render the writ-petitioner eligible and be entitled for this benefit. That is the reason why it had specifically ordered the reinstatement into service of the writ petitioner with the benefit of continuity of service and all attendant benefits. But at the same time it was weighing with the Labour Court that the writ petitioner must be visited with some punishment or other for the proven misconduct on his part inasmuch as he has admitted short remittance of Re.1/- of cash. Therefore, it had thought it appropriate to reduce his pay to the basic minimum in the scale while denying him back wages also. The imposition of penalty of reduction to the lowest stage in a running time-scale is undoubtedly one of the penalties which has been authorized in terms of Regulation 8 (vii) of the APSRTC (Classification, Control and Appeal) Regulations, but a reduction of pay to the earliest stage and granting of attendant benefits are mutually contradictory in their terms. If attendant benefits are awarded, the question of further reducing the pay of the employee concerned does

not arise. As was noticed supra, by the concept of attendant benefits, the employee would continue to earn an annual grade increment even during the period of his absence from service. Therefore, they do not go together. Further, the Labour Court had denied the benefit of back wages to the writ-petitioner. Admittedly, the writ-petitioner's services have been brought to an end by the punishment imposed on 17.08.1990 and the Labour Court had rendered its award on 16.6.1995, which was published on 30.08.1995. Thus, clearly five years period has elapsed from the time the writ-petitioner has been removed from service by the respondent-corporation. Denial of back wages for this period itself is a substantial punishment. Therefore, I consider that it is a sufficient punishment to meet the quantum of misconduct committed by the writ-petitioner. To meet the ends of justice, I modify the award passed by the Labour Court by directing reinstatement of the writ petitioner into service with continuity of service and attendant benefits but without back wages and, thus, deleting the further punishment of reducing his pay to the minimum basic as ordered by the Labour Court.

Accordingly, I allow this writ petition and modify the award passed by the Labour Court in I.D. No. 407 of 1992 (Old I.D.No. 359 of 1990) to the extent indicated above. The benefit of re-fixation of pay be carried out within a period of three months from today. No costs.

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NOOTY RAMA MOHAN RAO,J

Dated: -06-02007

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